

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

LATOYA BROWN; LAWRENCE
BLACKMON; HERBERT ANTHONY
GREEN; KHADAFY MANNING;
QUINNETTA MANNING; MARVIN
MCFIELD; NICHOLAS SINGLETON;
STEVEN SMITH; BESSIE THOMAS; and
BETTY JEAN WILLIAMS TUCKER,
individually and on behalf of a class of all
others similarly situated,

Plaintiffs,

v.

MADISON COUNTY, MISSISSIPPI;
SHERIFF RANDALL S. TUCKER, in his
official capacity; and MADISON COUNTY
SHERIFF'S DEPUTIES JOHN DOES #1
through #6, in their individual capacities,

Defendants.

Civil Action No.
3:17-cv-00347-WHB-LRA

**MEMORANDUM OF LAW IN RESPONSE TO DEFENDANTS' MOTION TO STRIKE
PLAINTIFF BETTY JEAN WILLIAMS TUCKER'S DEPOSITION ERRATA SHEET**

Plaintiffs respectfully submit this Memorandum of Law in response to Defendants' Motion to Strike Plaintiff Betty Jean Williams Tucker's Deposition Errata Sheet ("Motion"). ECF No. 198. In accordance with Fed. R. Civ. P. 30(e), Plaintiff Tucker timely submitted a deposition errata sheet identifying certain necessary corrections to her December 19, 2017 deposition transcript.

Ms. Tucker's first six corrections on the errata sheet concern the incorrect transcription of Ms. Tucker's husband's first name as "Alva"; Ms. Tucker simply seeks to correct her husband's first name to "Albert." Defs.' Ex. C, at 1, ECF No. 198-3. The final correction on Ms. Tucker's

errata sheet pertains to an incident described in the Complaint where deputies from the Madison County Sheriff's Department ("MCSD") searched all guests and the surrounding area at a celebratory barbeque hosted by Ms. Tucker. *See* Compl. ¶ 293. At the deposition, Defendants' counsel asked Ms. Tucker whether this incident had occurred "more than five years ago?" Ms. Tucker replied "[p]robably so." Defs.' Ex. A, at 6 (30:21-23), ECF No. 198-1. In her errata sheet, Ms. Tucker seeks to correct her response to "I do not remember" to accurately reflect her inability to recollect whether this incident occurred more, rather than less, than five years prior to the date of her deposition. Defs.' Ex. C, at 1. To that end, Ms. Tucker filled out completely the deposition errata sheet—provided by eDeposition Services, the court reporting service chosen by Defendants for Ms. Tucker's deposition—to make those necessary corrections. *See* Defs.' Ex. C. In the errata sheet, she listed each correction to be made to her deposition transcript along with the corresponding transcript page and line number, and she did not leave any provided fields for such corrections on the errata sheet blank. *Id.* at 1.

After Defendants received Ms. Tucker's deposition errata sheet on January 23, 2018 (*see* Defs.' Ex. B, ECF No. 198-2), Defendants did not ask for further explanation for these essentially two corrections made by Ms. Tucker nor did they attempt to resolve this minor dispute without court intervention. Rather, on February 23, 2018—a week after the deadline for the completion of class certification-related fact discovery and without meeting and conferring with Plaintiffs—Defendants filed the instant discovery Motion in violation of Paragraph 6(F)(4) of the Case Management Order (ECF No. 30) and Local Rules 7(b)(2)(C) and 37(a). As Exhibit A to Plaintiffs' Response, Plaintiffs also now provide Plaintiff Tucker's Reasons for Changes on Errata Sheet, which further cures any defect with her deposition errata sheet by providing

adequate explanations for her corrections. In light of the foregoing, Defendants' Motion should be denied.

ARGUMENT

Fed. R. Civ. P. 30(e) provides that a deponent "must be allowed 30 days" to review her or his deposition transcript and to "sign a statement listing the changes and the reasons for making them." Ms. Tucker's timely submitted deposition errata sheet should not be struck under this rule, as (i) she is seeking to correct essentially two errors in her transcript to accurately reflect her testimony and recollection; (ii) she completely filled out the errata sheet provided by the court reporting service chosen by Defendants and has cured any defect with such errata sheet with the submission of her Reasons for Changes on Errata Sheet, filed as Exhibit A to Plaintiffs' Response; (iii) Defendants failed to meet and confer with Plaintiffs prior to filing the Motion in violation of Paragraph 6(F)(4) of the Case Management Order (ECF No. 30) and Local Rule 37(a); and (iv) Defendants filed the Motion a week after the close of class certification-related fact discovery in violation of Local Rule 7(b)(2)(C).

First, in her deposition errata sheet, Ms. Tucker simply seeks to correct (i) six incorrect transcriptions of her husband's first name and (ii) her response regarding her recollection of the timing of the MCSD search at her home during a barbeque to accurately reflect her memory. Ms. Tucker's changes are not driven by gamesmanship or a desire to rewrite her testimony, in contrast to the cases relied upon by Defendants in their Motion. *See* Defs. Memo. at 5-6, ECF No. 199. For example, in *Reed v. Hernandez*, 114 F. App'x 609, 610-11 (5th Cir. 2004), the court found no manifest error in excluding an *untimely* errata sheet seeking to make *120 changes*, including changing "yes" to "no," "correct" to "incorrect," and otherwise contradicting previous answers. And in *Reynolds v. Werner Enters., Inc.*, No. 3:15-cv-764-HTW-LRA, 2016 WL 4821651 (S.D. Miss. Sept. 13, 2016), this Court struck an errata sheet seeking to rewrite

unfavorable testimony and otherwise change several “no” answers to “yes” and a “yes” answer to “no.” See Pls.’ Ex. B (Martin Deposition Errata Sheet, *Reynolds*, No. 3:15-cv-764-HTW-LRA, ECF No. 95-2).¹ Here, unlike in *Reed*, *Reynolds*, and *Crawford*, Ms. Tucker solely seeks to correct her husband’s first name in the transcript and her testimony regarding whether the barbeque search incident occurred “more than five years ago” to accurately reflect that she does not remember whether such incident occurred more, rather than less, than five years prior to the date of her deposition.

Second, none of the cases cited by Defendants address the significance of an errata sheet with no space on the form for explanations to be provided for changes, as is the case here with the errata sheet provided by the court reporting service chosen by Defendants for Ms. Tucker’s deposition. In *Reyazuddin v. Montgomery County, MD*, the court reporter similarly had provided an errata sheet that “included three columns labeled ‘page,’ ‘line,’ and ‘should have been,’” and after a motion to strike, the deponent “proceeded to list a reason for each of the changes.” No. CV DKC-11-951, 2013 WL 12246633, at *1 (D. Md. Apr. 24, 2013). The court held that it would “not strike the errata sheet on the basis of non-compliance with the procedural requirement of rule 30(e),” as “Defendant has cured the defect with the submission of [the deponent’s] *Reasons for Changes on Errata Sheet*.” *Id.* at *2. Here, too, Ms. Tucker’s errata sheet only was missing explanations because the form itself “did not contain a place to include the reasons for [her] changes.” *Id.* at *1. In addition, Fifth Circuit courts similarly have declined to strike errata sheets that lacked explanations for changes. See *Shook v. Winn-Dixie Montgomery Leasing, LLC*, No. 1:08 CV 330 HSO-JMR, 2010 WL 107633, at *1 (S.D. Miss.

¹ Similarly, in *Crawford v. Mare Mortg., LLC*, No. CIVA 4:05CV186 LR, 2006 WL 1892072, at *1 (S.D. Miss. July 10, 2006), the court rejected errata sheets that “directly refute[d] the testimony given at [Plaintiffs’] depositions” because “changing a ‘yes’ response to ‘no’ requires more rationale than the word ‘correction.’”

Jan. 11, 2010) (“Dr. Irby should be granted one week to cure the deficiencies contained in his deposition errata sheet.”); *Eicken v. USAA Fed. Sav. Bank*, 498 F. Supp. 2d 954, 961 (S.D. Tex. 2007) (declining to strike errata sheets). Accordingly, the Court should not strike Ms. Tucker’s errata sheet, given Ms. Tucker completely filled out the errata sheet provided to her by the court reporting service chosen by Defendants and has cured any defect with provision of her Reasons for Changes on Errata Sheet filed in connection herewith. *See* Pls.’ Ex. A.

Third, Defendants failed to meet and confer with Plaintiffs before filing their discovery Motion, in violation of Paragraph 6(F)(4) of the Case Management Order (ECF No. 30) and Local Rule 37(a). *See Ross v. Citifinancial, Inc.*, 203 F.R.D. 239, 240 (S.D. Miss. 2001) (denying motion to compel where no certificate of good faith was attached). Had Defendants met and conferred with Plaintiffs, this minor dispute may have been resolved without the need to consume the Court’s valuable resources.²

Finally, Defendants did not file their discovery Motion “sufficiently in advance of the discovery deadline to allow response to the motion, ruling by the court and time to effectuate the court’s order before the discovery deadline,” as required by Local Rule 7(b)(2)(C).³ Defendants were provided with Ms. Tucker’s errata sheet on January 23, 2018 (*see* Defs.’ Ex. B), a full three weeks before the February 16, 2018 class certification-related fact discovery deadline. *See* Order, ECF No. 169. However, Defendants only filed their Motion on February 23, 2018—one week *after* the February 16, 2018 deadline. ECF No. 198. Thus, Defendants’ Motion is untimely and should be denied on this basis as well. *See e.g., Walker v. Target Corp.*, No. 2:16-

² While this Court waived the “meet and confer” requirement in *Reynolds*, 2016 WL 4821651, at *2, *Reynolds* involved a deponent attempting to rewrite her testimony, unlike the two straightforward corrections Ms. Tucker seeks to make to her deposition transcript here. *Compare* Pls.’ Ex. B to Defs.’ Ex. C.

³ This Court also acknowledged in *Reynolds* that a motion to strike an errata sheet constitutes a “discovery dispute,” and is subject to discovery-related procedural rules. 2016 WL 4821651, at *2.

CV-42-KS-MTP, 2017 WL 5483213, at *2 (S.D. Miss. June 13, 2017) (denying motion to strike supplemental interrogatories that was filed after the discovery deadline); *Full House Resorts, Inc. v. Boggs & Poole Contracting Grp., Inc.*, No. 1:14-CV-223-KS-MTP, 2015 WL 4478495, at *3 (S.D. Miss. July 22, 2015) (denying motions to compel not filed “sufficiently in advance of the discovery deadline”).

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court deny Defendants’ Motion.

Dated: March 9, 2018

By: /s/ Joshua Tom
Joshua Tom

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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2018, I caused the foregoing **MEMORANDUM OF LAW IN RESPONSE TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF BETTY JEAN WILLIAMS TUCKER'S DEPOSITION ERRATA SHEET** to be electronically filed with the Clerk of the Court using the CM/ECF system, through which copies have been served to:

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LATOYA BROWN VERSUS MADISON COUNTY, MISSISSIPPI, ET AL.
 Betty Jean Williams Tucker – 12/19/2017

REASONS FOR CHANGES ON ERRATA SHEET

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2			
3	PAGE/LINE	CORRECTION	REASON FOR CHANGE
4	8:18	Replace “Alva” with “Albert”	Transcription error
5	11:1	Replace “Alva” with “Albert”	Transcription error
6	14:6	Replace “Alva” with “Albert”	Transcription error
7	14:8	Replace “Alva” with “Albert”	Transcription error
8	14:10	Replace “Alva” with “Albert”	Transcription error
9	14:14	Replace “Alva” with “Albert”	Transcription error
10	30:23	Change “probably so” to	During my deposition, I incorrectly stated that
11		“I do not remember”	an incident probably happened more than five
12			years ago. Upon further reflection and
13			reviewing the transcript, I do not know
14			whether it more likely occurred more, rather
15			than less, than five years ago. I do not have
16			any documents that I can review to help me
17			remember. Accordingly, the correct answer to
18			the question is “I do not remember.”
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LATOYA BROWN VERSUS MADISON COUNTY, MISSISSIPPI, ET AL.

Betty Jean Williams Tucker - 12/19/2017

1 I, BETTY JEAN WILLIAMS TUCKER, have read the foregoing
2 deposition and hereby affix my signature that same
3 is true and correct, except as noted above.

4 Betty J. Tucker

5 BETTY JEAN WILLIAMS TUCKER

6 THE STATE OF Mississippi

7 COUNTY OF Hinds

8 Before me, Jade Morgan, on this day

9 personally appeared BETTY JEAN WILLIAMS TUCKER, known
10 to me (or proved to me under oath or other document)
11 to be the person whose name is subscribed to the
12 foregoing instrument and acknowledged to
13 consideration therein expressed.

14 Given under my hand and seal of office this 8th
15 day of March A.D., 2018.

16 Jade Morgan

17
18 NOTARY PUBLIC IN AND FOR

19 THE STATE OF Mississippi

20 My Commission Expires: November 30, 2021

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THERESA MARTIN - 05/24/2016

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CERTIFICATE OF DEPONENT

I, THERESA MARTIN, certify that I have examined the foregoing pages as to the correctness thereof, and that after reading said pages, I find them to contain a full and true transcript of the testimony as given by me on MAY 24, 2016, except for the list of corrections, if any, attached on a separate sheet with the page number, line number and the desired correction/change.

Witness my hand, this the day of
, 2016.

Theresa Martin

THERESA MARTIN

CERTIFICATE

Subscribed and sworn to before me, this the

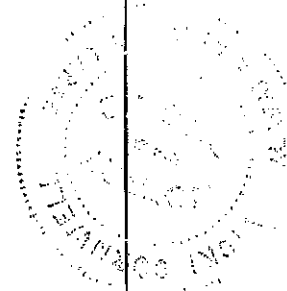
27th day of June, 2016.

MY COMMISSION EXPIRES:

Vicki C. Cunniff

2-19-2019

NOTARY PUBLIC



THERESA MARTIN - 05/24/2016

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1	LINE NO.	PAGE NO.	CORRECTION
2	<u>22</u>	<u>14</u>	<u>Change to: I was first a student driver and then a driver</u>
3	<u>6</u>	<u>49</u>	<u>Change to: While I was a student driver, in January</u>
4			<u>2013, I was counseled about the importance of maintaining accurate logs, and had to take CBTS</u>
			<u>for remedial log test.</u>
5	<u>6</u>	<u>58</u>	<u>Change to: Yes, I didn't see Ms. Reynolds and I cannot</u>
6			<u>be sure what she may have done or not done that would have been wrong.</u>
7	<u>18</u>	<u>100</u>	<u>Change to: Yes.</u>
8	<u>4</u>	<u>101</u>	<u>Change to: No.</u>
9	<u>6-8</u>	<u>101</u>	<u>Strike this response.</u>
10	<u>20-21</u>	<u>108</u>	<u>Change to: While I was a student driver, In January</u>
11			<u>2013, I had to take additional CBTS for remedial log test.</u>
12	<u>3-5</u>	<u>109</u>	<u>Change to: Yes</u>
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